Another Case to Watch in the Ongoing Debate Over the Computer Fraud & Abuse Act

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The past year has produced noteworthy decisions from the Sixth, Ninth and Eleventh Circuit Courts of Appeals – and recent Congressional hearings – regarding the applicability of the Computer Fraud & Abuse Act ("CFAA") to employers' claims that disloyal employees accessed their employers' computers in order to take trade secrets, source code, and other valuable electronically stored information. The CFAA provides a federal, private right of action against any person who "knowingly and with intent to defraud, accesses a protected computer without authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value… ." 18 U.S.C. § 1030(a)(4).

The recent decisions and congressional hearings are fueling one of the hotter debates within the judicial and legislative branches of the federal government: the extent to which Congress meant to "federalize" certain computer-related disputes between employers and their employees. On this legal question, there is a continuum of interpretations of the CFAA. Some interpret the CFAA as giving employers a federal cause of action against their disloyal departing employees, in what has been perceived as a pro-employer interpretation. On the other end of this continuum are what would appear to be employee-centric opinions holding that the CFAA does not create such a right in employers.

The next case to watch in this debate over the scope of the CFAA might be Metabyte, Inc. v. Nvidia Corp., et al. According to the Complaint (available in .pdf format below), Metabyte is an information technology services company that produces software and provides product development, consulting and related information technology staffing services. Metabyte claims that it produced an original 3D technology, which consists of executable source code and enables a three-dimensional display through specialized glasses used for viewing computer screens. The primary application for this software and the glasses is for personal computer-based gaming, according to the Complaint.

Metabyte alleges that it developed its 3D software through the investment of millions of dollars and the efforts of its software developer-employees, and Metabyte has made the conduct of these software developers the epicenter of its Complaint. According to

Metabyte, these employees – now Nvidia's co-defendants – left Metabyte and joined Nvidia, where they allegedly developed a 3D technology for Nvidia that is similar to Metabyte's 3D technology. But before Metabyte's former software developers left, Metabyte contends, they improperly copied the source code for Metabyte's 3D technology, then used this source code to create Nvidia's competing 3D technology.

At the moment, only Metabyte's side of the story is public. However, the allegations in the Complaint set the stage for another "employer versus allegedly faithless employee" showdown. The disposition of these allegations will turn, among other things, on the district court's interpretation of the scope of the CFAA, the accuracy of the allegations against Metabyte's former software developers, the timing and circumstances of the purported accessing of Metabyte's computers, and the extent to which Metabyte took steps to restrict the access of its software developers.

This blog will keep its eye on Metabyte, and any decisions regarding the CFAA that result from this case.

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Complaint - Metabyte v Nvdia, et al..pdf (4.61 mb)